IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 243 of 2007()

ST.415/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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PETITIONER: ACCUSED NO.1

U.S. KALYANI, W/O.UMAPATHI SIVAN,
PLOT NO.D/14, DOOR NO.4, LAKSHMI NAGAR,
THIRD STREET, NANGANALLUR,
CHENNAI-600 061.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: COMPLAINANT:

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1. PUNJAB NATIONAL BANK,
KALPATHY BRANCH, PALAKKAD.
REP. BY ITS MANAGER, JAYARAM.

2. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

3. UMAPATHY SIVAN, PLOT NO.D 14, DOOR NO.4,
LAKSHMY NAGAR, III STREET,
NAGANALLUR, CHENNAI-61.

R2 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 243 of 2007

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Dated this the 20th day of February, 2007

O R D E R

The petitioner is the first accused in a prosecution under Section 138 of the N.I. Act. Her husband, the second accused, is the third respondent herein. Proceedings have been initiated against the petitioner and her husband by the first respondent, Punjab National Bank, Palghat. The father of the petitioner herein, one K.N.S. Narayanan, had liabilities to the complainant bank on certain loan transactions. The petitioner herein is the legal heir of her deceased father. After the death of the father, there was an attempt to settle the loan account. It was allegedly agreed that an amount of Rs. 3 Lakhs shall be paid. Towards the said liability, the second accused allegedly issued a cheque to the complainant bank. That cheque was dishonoured on the ground of insufficiency of funds. The complainant initiated steps to prosecute the petitioner as well as her husband under Section 138 of the N.I. Act.

2. The complaint was filed and cognizance has been taken by the learned Magistrate under Section 138 of the Act against both the

petitioner and her husband. The petitioner has come to this Court complaining about the illegal action initiated against her by the complainant. She contends that in any view of the matter, the petitioner cannot have any culpable liability under Section 138 of the Act. She is not the drawer of the cheque. Even assuming that she has a liability as the legal heir of her deceased father to pay the outstanding amount in the loan account or the amount of Rs. 3 Lakhs, which is allegedly agreed to be paid in settlement of the loan account, she cannot be made liable under Section 138 for the liability as the drawer of the cheque. The petitioner is not the drawer of the cheque. She is not the account holder. She has not issued any cheque. In these circumstances the prosecution launched against her is bad and unsustainable, contends the learned counsel for the petitioner.

3. The respondent/complainant has been served. There is no appearance for the respondent/complainant. The short question to be considered is whether the prayer for quashing of proceedings under Section 138 of the N.I. Act against the petitioner can be sustained or not.

4. The liability under Section 138 of the Act is only that of the drawer of the cheque. His/Her culpable liability can only be in respect of a cheque issued by him/her on an account maintained by him/her with the

bank. In the instant case, there is no allegation even that the petitioner had issued a cheque or that the cheque, which was dishonoured on the ground of insufficiency of funds, is drawn on an account maintained by her.

5. It follows from the above discussions that the petitioner cannot be mulcted with any culpable liability under Section 138 of the Act. The challenge raised is found to be of substance. It is found to be acceptable. In the total absence of any contention raised by the first respondent/ complainant, it is unnecessary to advert to the facts in any greater detail.

6. This Crl.M.C. is accordingly allowed. S.T.No.415 of 2006 in so far as it relates to the petitioner/first accused is hereby quashed.

(R. BASANT)
Judge

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